

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HOA QUANG HA,) No. C 03-03828 JF (PR)
Petitioner,) ORDER TO SHOW CAUSE
vs.)
GAIL LEWIS, Warden,)
Respondent.)

Petitioner, a state prisoner at the Pleasant Valley State Prison in Coalinga, California, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his state conviction. Good cause shown, the Court granted Petitioner's motion to stay the instant petition to allow him to exhaust an additional claim. (See Docket No. 19.) On May 21, 2009, the Court reopened this action after Petitioner filed an amended petition and established that the state high court denied his state petition. (See Docket No. 21.) The Court orders Respondent to show cause why the petition should not be granted.

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STATEMENT

In 1998, Petitioner was convicted by a jury in Santa Clara Superior Court of second degree robbery, attempted second degree robbery, assault with a firearm, and possession of a firearm by a felon with personal use. (Pet. 2.) Petitioner was sentenced to a total term of 62 years to life in state prison. (*Id.*) Petitioner filed direct appeals in the state courts which were denied. Petitioner filed habeas petitions in the state superior court, state appellate court, and the state supreme court. The California Supreme Court denied his last state habeas petition on March 21, 2007. (*Id.* at 5.)

DISCUSSION

A. Standard of Review

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner's Claims

As grounds for federal habeas relief, Petitioner claims the following: 1) ineffective assistance of appellate counsel; 2) petitioner was incompetent to stand trial; 3) ineffective assistance of trial counsel; 4) statements obtained in violation of Miranda¹ were unlawfully admitted at trial; 5) the trial court erred in finding a witness unavailable and admitting prior testimony under a hearsay exception of the California Evidence Code; 6) the trial court erred in admitting the opinion testimony of a police officer; 7) ineffective assistance of trial counsel for failing to object to the police officer's opinion testimony;

¹ Miranda v. Arizona, 384 U.S. 436 (1966)

1 and 8) the trial court erred in failing to suppress unlawfully obtained evidence.

2 Federal habeas relief is only available on the basis of a violation of a federal
3 constitutional right or other federal law. See 28 U.S.C. § 2254(a); Rose v. Hodges, 423
4 U.S. 19, 21 (1975). Accordingly, claim five above, which only challenges the application
5 of a state law, does not state a cognizable basis for relief. Liberally construed, the
6 remainder of Petitioner's claims are cognizable under § 2254. The Court orders
7 Respondent to show cause why the petition should not be granted.

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9 CONCLUSION

10 1. The Clerk shall serve by mail a copy of this order and the amended petition
11 (Docket No. 20) and all attachments thereto upon the Respondent and the Respondent's
12 attorney, the Attorney General of the State of California. The Clerk shall also serve a
13 copy of this order on the Petitioner.

14 2. Respondent shall file with the Court and serve on Petitioner, **within ninety**
15 (**90**) **days** of the date this order is filed, an answer conforming in all respects to Rule 5 of
16 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
17 should not be granted. Respondent shall file with the answer and serve on Petitioner a
18 copy of all portions of the state parole record that have been transcribed previously and
19 that are relevant to a determination of the issues presented by the petition.

20 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
21 with the Court and serving it on Respondent **within thirty (30) days** of that the answer is
22 filed.

23 3. Alternatively, Respondent may, **within ninety (90) days** of the date this
24 order is filed, file a motion to dismiss on procedural grounds in lieu of an answer, as set
25 forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254
26 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on
27 Respondent an opposition or statement of non-opposition **within thirty (30) days** of the
28 date the motion is filed, and Respondent shall file with the court and serve on Petitioner a

1 reply **within fifteen (15) days** of the date any opposition is filed.

2 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded
3 that all communications with the Court must be served on respondent by mailing a true
4 copy of the document to Respondent's counsel. Petitioner must keep the Court and all
5 parties informed of any change of address by filing a separate paper captioned "Notice of
6 Change of Address." He must comply with the Court's orders in a timely fashion.
7 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
8 to Federal Rule of Civil Procedure 41(b).

9 IT IS SO ORDERED.

10 DATED: 6/29/09



JEREMY FOGGEL
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HOW QUANG HA,
Petitioner,
v.
GAIL LEWS, Warden,
Respondent.

Case Number: CV03-03828 JF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 7/9/09, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Hoa Quang Ha
K-90907
Pleasant Valley State Prison
PO Box 8503
C-2-206-Up
Coalinga, CA 93210-8503

Dated: 7/9/09 Richard W. Wieking, Clerk